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BOOK REVIEWS

OCCASIONAL PAPERS AND ADDRESSES OF AN AMERICAN LAWYER. By HENRY W. TAFT. New York: THE MACMILLAN COMPANY. 1920. pp. xxiii, 331.

"The fugitive papers and addresses contained in this volume", modestly says Mr. Taft in his interesting introduction, "are the by-product of a busy professional life". (p. iii) But it is a by-product of the same metal as the principal output. We may perhaps not accept Mr. Taft's theory that "A modern lawyer does not find himself qualified by habit for an effective performance" on occasions "where there is not to be an orderly treatment of some serious subject", but we shall not find fault with his statement "that the pursuit of advocacy in the courts, particularly under modern conditions, . . . leads to compression and lucidity of statement", (p. ix) for these qualities he consistently shows.

The title under which the seventeen papers and addresses are collected is accurately descriptive. Each has done service on the occasion by which it was evoked. Seven addresses or papers were first delivered or read at bar association meetings; one address was delivered before the Harvard Law School; two papers were first published in the COLUMBIA LAW REVIEW; four, including those discussing the League of Nations, some of which have already been republished in *The Covenanter*, appeared in the *New York Times*. Of the remaining three one was delivered before the American Chamber of Commerce at Paris; another is an appreciation of John L. Cadwalader, read at the opening of the Trenton Public Library, while the third, "Aspects of Bolshevism and Americanism", was delivered before the League for Political Education.

While all were prepared during the last decade, the rapid march of events, as Mr. Taft remarks, has somewhat detracted from their timeliness. The address, "Recall of Decisions", was delivered when Mr. Roosevelt was leading the onslaught on the courts, but, when it is published, Mr. Taft writes:

"In the last years of his [Roosevelt's] life reflection and the recession of the progressive wave seem to have led him to abandon the views which he had so vigorously pressed; at least he ceased to make them a guide for his political conduct." (p. xv.)

Of lasting interest and volume, however, is that part of the address where Mr. Taft points out that the agitation for the recall of decisions is merely a modern phase of impatience of constitutional restraints: this is emphasized by reminding us of the popular dissatisfaction caused by such decisions as *United States v. McCulloch*, *Marbury v. Madison*, the Dred Scott Case, and the Income Tax Case. Mr. Taft also points out that the method originally provided for setting aside such decisions as retard progressive legislation is by constitutional amendment. Recent developments have demonstrated that this remedy is not so impractical as was once supposed.

Mr. Taft in this address advocated, for the purpose of reducing the number of state statutes set aside by the state courts as violative of the Federal Constitution, the granting of the right of appeal in these cases to the Supreme Court: legislation based on this principle has now been adopted with gratifying results.

In his address before the League for Political Education Mr. Taft vividly contrasts "Bolshevism" and "Americanism" by placing in juxtaposition the guarantees of the Constitution and the constitution and decrees of the Soviet government. He also renders a service by insisting upon recognition of the

fact that Bolshevism is a despotism, not merely of a class proletariat, but of a small part of that class, the industrial workers of the cities. The reviewer has not seen a clearer exposition of the subject, and it should be prescribed as a specific both for those well-meaning persons to whom "Bolshevism" is merely an opprobrious epithet and for those "parlor Bolsheviks" who, as Mr. Taft says, "too often confuse the Soviet Ark with the Mayflower". (p. 306).

One of the compensations for an *ex post facto* reading of discussions of questions then current is the opportunity afforded for viewing the success of the author's vatic ventures. In his article, "What is to be Done with Our Railroads?", Mr. Taft insists upon the inter-dependence of rates and wages and upon the responsibility of the Government as to each. The synchronization of recent events furnishes the emphasis.

The articles analyzing the League of Nations were widely read and discussed on their initial appearance. It is refreshing to turn aside from the hurly-burly of political controversy and re-read these temperate, unbiased analyses of fundamentals. Of especial value are the comments upon the extent of and limitations on the treaty making power: it is held to extend to any question which can properly be the subject of negotiation with a foreign government, provided that it shall not "authorize what the Constitution forbids or a change in the character of the government, or in that of one of the states or a cession of any portion of the territory of the latter without its consent".¹ Many treaties illustrative of the frequent exercise of this extensive power are cited. This is so precisely the kind of treatment the subject requires that to contrast it with the partisan vaporings which now becloud the issue is to find cause for despair.

While some of the other subjects discussed are of more immediate importance, Mr. Taft is not less interesting when he speaks as a lawyer to lawyers. He does not deny the need for reform, although he says, "when I contemplate the opportunities . . . presented for alluring experimentation, I am amazed at the moderation of my recommendations". (p. 295.) Especially is he impatient with some of the artificial rules of evidence which to the ascertainment of truth interpose "obstacles which wise and cautious men do not consider necessary in making investigations on which they base important actions". (p. 25). Equally vigorous is his criticism of the excessive restrictions upon the power of the trial judge which force him into "an almost timorous attitude". (p. 33).

But Mr. Taft is chiefly concerned with the profession and its members. He is impressed that in recent years its prestige has declined. He indicates the causes: other vocations have increased in power and influence, education has become more widely diffused and the members of the profession no longer enjoy distinction because of their intellectual equipment. He deprecates the tendency in the profession for its members to become financially interested in ventures dependent upon their legal advice and to become in effect employees of some one interest. He recognizes that the exactions of a large practice leave little time for office-holding by the leaders of the bar. The call to public service which he sounds has another note—"to contribute to the thought of the country upon questions of public policy"—, and he points out that there was never greater need for such service—for it to be rendered disinterestedly, without partisanship, and free from the influence of the pecuniary interest of any client. Mr. Taft's example lends emphasis to his words. While he has not found time for office-holding, having refused judicial appointment twice at least, his contribution to constructive thought

¹ *Geofroy v. Riggs* (1890) 133 U. S. 258, 10 Sup. Ct. 295.

has been significant. Doubtless, he will realize his expressed hope that "this volume may have some effect upon the younger members of the legal profession in stimulating them . . . to a more active performance of the duties of citizenship". (p. v.)

WALTER P. ARMSTRONG

THE FRENCH LAW OF WILLS, PROBATE, ADMINISTRATION AND DEATH DUTIES. Second Edition. BY PIERRE PELLERIN. London: STEVENS & SONS LTD. 1920. Pp. 90.

Mr. Pierre Pellerin has given in this booklet of ninety pages an admirable resumé in the English language of the French Law of probate, administration and taxes incident thereto. It is always difficult to make foreign law intelligible in translation, as civil law terms find no real equivalent in the common law. Mr. Pellerin is evidently well aware of this, and has avoided, where possible, the use of purely technical and intranslatable legal terms. He has given a good resumé of the fundamental difference between English and French law in reference to succession, which difference is, of course, incident to the different historic development in England and on the Continent, and especially due to the very different role assigned to the family unit by the civil law. The rules of descent, the formalities to be complied with for the making of wills and for the devolution of successions, and the acceptance of successions after examination into the liabilities involved, are clearly set forth.

The rates of taxes on legacies and some other details herein set forth naturally change with some frequency, and some of the items set forth in the tables are probably not up to date at the present moment. It would, therefore, be necessary to examine the French statutes since the date of publication in order to be sure regarding the prevailing rates of tax.

The rules of private international law applicable, and especially the very difficult matter of the theory of the *renvoi*, are succinctly set forth and a few leading authorities cited.

This little book gives a good bird's-eye-view of the general French law of succession. It is lucid and very compact, but, like all such works, it cannot treat with any adequacy of the very difficult situations arising, especially in regard to conflict of laws; and its main utility must be to the student who wishes to have some very general view of the French law on the subject of successions for purposes of comparison with the common and usual statutory law prevailing in the United States.

FREDERIC R. COUDERT

CONSTITUTIONAL CONVENTION BULLETINS. Compiled and Published by the LEGISLATIVE REFERENCE BUREAU. Springfield, Ill. 1920. pp. xxxiii, 1224.

This volume contains a series of bulletins prepared by the Illinois Legislative Reference Bureau for the use of delegates to the 1920 Constitutional Convention in that state. The pamphlets constitute an excellent illustration of the value to the legislator of legislative reference work. Moreover, with a general table of contents and index they afford to the student of our state constitutional law a useful source of material and suggestion. Our state constitutions deal principally with the organization, powers and jurisdiction of the three great branches of government,—legislative, judicial and executive. As might be expected, therefore, the greater part of this volume is devoted to a statement of the existing organization and functions of the legislature, the courts, and the executive departments, with a brief review of the judicial